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# Recent Case: Constitutional Law - Due Process in Juvenile Proceedings - Reasonable Doubt Standard [ *In re Winship*, 397 U.S. 358 (1970) ]

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## Recent Cases

### CONSTITUTIONAL LAW — DUE PROCESS IN JUVENILE PROCEEDINGS — REASONABLE DOUBT STANDARD

*In re Winship*,  
397 U.S. 358 (1970).

The United States Supreme Court, in the recent decision of *In re Winship*,<sup>1</sup> held that the "essentials of due process and fair treatment" require that "proof beyond a reasonable doubt" be the standard administered at the adjudicatory stage of a juvenile proceeding where the juvenile is charged with an act which would constitute a crime if committed by an adult. The case grew out of a finding by a New York Family Court<sup>2</sup> that appellant, then a 12-year-old boy, was a juvenile delinquent.<sup>3</sup> The judge specifically stated that his finding was based on a preponderance of the evidence offered, which was the standard required by the applicable New York statute.<sup>4</sup> As a result of that finding, the youth was committed to a training school for a period of up to 6 years. The New York Court of Appeals affirmed,<sup>5</sup> basing its decision on the express statutory language and the need for a special system to deal with juvenile offenders, which would remain apart from the methods and ineradicable consequences of the criminal system. The Supreme Court reversed.

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<sup>1</sup> 397 U.S. 358 (1970).

<sup>2</sup> In 1962 New York created a system of family courts. Although the jurisdiction of these courts has been changed twice through amendments in 1964 and 1970, they still retain exclusive original jurisdiction over, among other things, "proceedings concerning juvenile delinquency and whether a person is in need of supervision . . . ." N.Y. FAMILY CT. ACT § 115 (McKinney Supp. 1970).

<sup>3</sup> A juvenile delinquent is defined as "a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime." N.Y. FAMILY CT. ACT § 712(a) (McKinney 1963).

The "crime" element distinguishes juvenile delinquents from other minors who come within the jurisdiction of the Family Court. For example, a "person in need of supervision" is defined as "a male less than sixteen years of age and a female less than eighteen years of age who does not attend school in accord with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority." N.Y. FAMILY CT. ACT § 712(b) (McKinney Supp. 1970). The *Winship* Court specifically excluded the latter from its decision because they are not accused of a crime. 397 U.S. at 359 n.1.

<sup>4</sup> The relevant section provides: "Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on a preponderance of the evidence." N.Y. FAMILY CT. ACT § 744(b) (McKinney Supp. 1970).

<sup>5</sup> *W. v. Family Court*, 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969).

The majority, speaking through Mr. Justice Brennan, reaffirmed the constitutional stature of the reasonable doubt standard. The Court "explicitly [held] that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."<sup>6</sup> Mr. Justice Brennan found support for the constitutional stature of the reasonable doubt standard by an examination of its history and its importance in the operation of the criminal law. He emphasized the nearly unanimous adherence to the higher standard of proof in common law jurisdictions and the many opinions of the Court which have assumed that the reasonable doubt standard is constitutionally required.<sup>7</sup> One of the moral foundations on which the criminal law is based is that the greatest possible accuracy in factual determinations must be maintained to prevent conviction of the innocent. Thus, the standard serves the important role of reducing the risk of criminal conviction based on factual error.

These same considerations apply to a juvenile involved in an adjudicatory proceeding which could result in a deprivation of his freedom. As the Court established in *In re Gault*,<sup>8</sup> the standards that are essential to procedural fairness, as embodied in the due process clause, apply to juveniles as well as to adults. Mr. Justice Brennan rejected the State court's reliance on the statutory difference between a conviction and a finding of delinquency as being a resort to the illusory "civil label of convenience" which was rejected in the *Gault* opinion.

Although in full agreement with the holding of the majority, Mr. Justice Harlan wrote a concurring opinion. He emphasized that not all the procedural requirements imposed by due process in a criminal case should be carried over to the juvenile process. Rather, a balance must be sought between constitutionally imposed procedural fairness and "the essential elements of the state's purpose" in creat-

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<sup>6</sup> 397 U.S. at 364.

<sup>7</sup> See, e.g., *Speiser v. Randall*, 357 U.S. 513, 525-26 (1958); *Holland v. United States*, 348 U.S. 121, 138 (1954); *Leland v. Oregon*, 343 U.S. 790, 795 (1952); *Brinegar v. United States*, 338 U.S. 160, 174 (1949).

<sup>8</sup> 387 U.S. 1 (1967). In *Gault* the Court held that the due process clause demands that juveniles be accorded procedurally fair treatment during an adjudication where a criminal act is charged. The elements of procedural fairness include adequate notice of the specific charges or factual allegations, notice of the right to counsel and the availability of court appointed counsel, the privilege against self-incrimination, the right to confrontation and cross-examination of witnesses, and the right to an appellate review with a transcript of the proceedings.

ing juvenile courts.<sup>9</sup> Mr. Justice Harlan would create a constitutional standard by applying "settled usages and modes of proceedings" and "fundamental principles of liberty and justice" to the character and requirements of each fact situation.<sup>10</sup>

Mr. Justice Black dissented in an opinion which exceeded the problems presented by this particular case. He felt that the Court went beyond application of the procedural requirements found explicitly in the Bill of Rights and created a standard not required by the Constitution. Although he agreed that strong arguments can be made for the reasonable doubt standard in criminal cases, he did not feel it was the role of the Court to say that another standard, not prohibited by the Constitution, is forbidden. Mr. Justice Black would limit the Court to the words of the written Constitution, strongly opposing those interpretations of the due process clause that use fundamental procedural fairness as a test of constitutionality.<sup>11</sup>

Mr. Chief Justice Burger also dissented. He thought the Court erred in assuming that juvenile proceedings are criminal prosecutions subject to constitutional limitations. He asserted that the Court is forcing the states to transform juvenile courts into criminal courts. This is in conflict with the intentions of the state legislatures to create benevolent, less formal institutions to deal with the problems of juvenile offenders.<sup>12</sup> Mr. Chief Justice Burger could find no constitutional due process requirement to override this legislative judgment of the states.

The majority argued, however, that the beneficial aspects of the juvenile system would not be harmed by application of the reasonable doubt standard. Mr. Justice Brennan emphasized the limited area in which the higher standard was required. The decision only affects the quantum of proof at the adjudicatory stage of a proceeding where a juvenile is charged with a criminal act. The preliminary and dispositional stages of the process are unchanged. A change in

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<sup>9</sup> 397 U.S. at 375.

<sup>10</sup> Mr. Justice Harlan originally developed this line of reasoning in his opinion in *In re Gault*, 387 U.S. 1, 68 (1967). He stated that only three procedural requirements should be applicable to state juvenile courts: (1) timely notice of the nature and terms of the proceeding should be given to the parents and children; (2) full and timely notice should be given to both the parents and children that counsel may appear on their behalf and that when an offense may result in confinement, counsel may be appointed for an indigent; and (3) a written record should be kept for review on appeal. He felt that the privilege against self-incrimination and the rights to confrontation and cross-examination were unnecessary requirements. *Id.* at 72.

<sup>11</sup> See *Adamson v. California*, 332 U.S. 46, 68 (1947) (Black, J., dissenting).

<sup>12</sup> See generally Young, *A Synopsis of Ohio Juvenile Court Law*, 31 U. CIN. L. REV. 131, 136 (1962).

the standard of proof on which the judge must base his decision does not, in itself, appear to be the kind of change that could precipitate the destruction of the juvenile system that Mr. Chief Justice Burger predicts.

The *Winship* decision has settled the controversy, which had occupied state courts and legislatures since *Gault*, over the correct standard of proof in juvenile cases.<sup>13</sup> The three approaches of the state courts prior to *Winship* illustrate the disagreement among the states. Some states had concluded that the reasoning and language of the *Gault* opinion called for an application of the standard of proof used in criminal trials.<sup>14</sup> Others, like the New York Court of Appeals in *Winship*, concluded that, despite *Gault*, the proceedings remained civil in nature and the civil preponderance of the evidence standard was sufficient.<sup>15</sup> A third response, exhibited by the Supreme Court of Ohio in *In re Agler*,<sup>16</sup> was that the *Gault* decision called for more than the civil standard, but did not require proof beyond a reasonable doubt. The *Agler* court found the clear and convincing evidence standard appropriate in a proceeding which has both criminal and civil aspects.

Although the day-to-day operations of the juvenile courts are not likely to be changed by adoption of the reasonable doubt standard, *Winship* does take those courts one step further from the juvenile system which the reformers intended to create.<sup>17</sup> Each constitutional standard imposed on a juvenile court makes it less a social agency and more a court of law. The role of the juvenile judge is now complicated by the possibility of reversals because an appellate court may not believe, as a matter of law, that the evidence was sufficient to meet the higher standard.<sup>18</sup>

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<sup>13</sup> See generally Cohen, *The Standard of Proof in Juvenile Proceedings: Gault Beyond a Reasonable Doubt*, 68 MICH. L. REV. 567 (1970).

<sup>14</sup> See, e.g., *In re Urbasek*, 38 Ill. 2d 535, 232 N.E.2d 716 (1968). See also *United States v. Costanzo*, 395 F.2d 441 (4th Cir.), cert. denied, 393 U.S. 883 (1968) (prosecution of a 17-year-old youth for interstate transportation of a stolen car under the Dyer Act, 18 U.S.C. § 2312 (1964)).

<sup>15</sup> See, e.g., *In re M.*, 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); *W. v. Family Court*, 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969); *State v. Santana*, 444 S.W.2d 614 (Tex. 1969).

<sup>16</sup> 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969). *Agler* led to the codification of the clear and convincing standard. OHIO REV. CODE ANN. § 2151.35 (Page Supp. 1970) (effective Nov. 19, 1969). See also C. MCCORMICK, EVIDENCE §§ 319-21 (1954), for a discussion of the applications of the standards of proof.

<sup>17</sup> See Young, *supra* note 12, at 136.

<sup>18</sup> See Paulsen, *Juvenile Courts and the Legacy of '67*, 43 IND. L.J. 527, 552 (1968). In another part of his article, however, Professor Paulsen concluded that, regardless of